IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 21ST JULY 2006 / 30TH ASHADHA,1928

ST.Rev..No. 20 of 2003

TA.16/2000 of S.T.A.TRIBUNAL,ADDL.BENCH,KZD.
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REVISION PETITIONER/RESPONDENT/ASSESSEE:

R.KRISHNAKUMAR, PROPRIETOR,
NEW INDIA JEWELLERY, PALAYAM ROAD, KOZHIKODE.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENT/APPELLANT/REVENUE:

STATE OF KERALA,
REPRESENTED BY ADDITIONAL SALES TAX OFFICER-V,
II CIRCLE, KOZHIKODE.

BY GOVERNMENT PLEADER (SHRI GEORGEKUTTY MATHEW)

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD

ON 21/07/2006, THE COURT ON THE SAME DAY PASSED THE

FOLLOWING:

C.N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

S.T.REV. NO.20 OF 2003

Dated this the 21st day of July, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

The question arising in this TRC is whether the tribunal was justified in restoring the addition of Rs.2,56,000/= to the taxable turnover which was deleted by the first appellate authority. According to petitioner, he started the gold jewellery business only on 1.12.1997 and the sales made prior to the said date by the proprietor cannot be treated as part of the turnover. The disputed turnover pertains to sale of gold ornaments by the petitioner for Rs.2,56,000/= on 21.10.1997. The assessing authority collected copy of the declaration under the Voluntary Disclosure Income Scheme (VDIS) furnished by petitioner on 16.10.1997 before the Income Tax Authorities wherein the address shown was the business address of the petitioner,

namely, New India Jewellery. Therefore, he concluded that petitioner was in business as on that date and the sale from the stock declared before the Income Tax Authorities five days after furnishing of the declaration is a business transaction that attracts liability under the Act. Even though the first appellate authority allowed the appeal on the ground that the sale was unconnected with the petitioner's business, the tribunal on facts found otherwise and sustained the addition, against which this TRC is filed.

2. Learned counsel for the petitioner contended that the tribunal has no material to hold that the petitioner commenced business prior to 1.12.1997. The further contention is that the disputed sale is to a jeweller and not a retail sale which was the business of the petitioner. In other words, the contention is that the massive sale of part of the gold ornaments owned by the proprietor prior to commencement of the business does not

amount to business transaction attracting tax liability. The question, therefore, to be considered is whether the petitioner can be said to have commenced business on 21.10.1997, i.e. The date of disputed sale of the ornaments to another jeweller. We have no doubt in our mind that a business name itself is adopted contemporaneous to commencement of business. In fact, the total stock difference is seen declared by the petitioner only through a VDIS declaration filed on 16.10.1997, i.e. Five days before the disputed sale. There is nothing to indicate as to when exactly the petitioner commenced the business. However, the petitioner himself admits that business was commenced much before granting registration on 20.8.1998. The scheme of the KGST Act does not require registration or formal declaration of commencement of business to the Departmental authorities for attracting liability under the Act. So long as, the transaction attracts the definition of "Sale" in the course of "business" and

the person doing it answers the description of "dealer" under the definition clauses, liability is attracted no matter whether he has formally informed commencement of business to the Department or whether he has applied for or taken registration. Registration under the Act is not a necessary pre-condition for attracting liability on transactions which would otherwise attract liability under the Act. In fact, under rule 5(1) of the KGST Rules, a dealer need to apply for registration only after commencement of business and after his turnover crosses the registerable minimum which during the relevant time was Rs.1 Lakh. Therefore, the Department need not trace the date of commencement of business by the dealer or as to when a dealer is registered, to assess his turnover for the whole year assessed irrespective of whether such business was carried out prior to taking registration or even prior to making application for registration. The materials on record go to establish beyond

doubt that business was in contemplation of the petitioner and trade name was adopted and business place taken over at least on 16.10.1997, when the petitioner filed VDIS declaration before the Income Tax Department in the trade name. There is nothing wrong in assuming that the petitioner was ready to commence business with the stock at least on the date of making declaration before the Income Tax Authorities. The sale made from out of the stock five days after furnishing declaration was, therefore, rightly treated as a business transaction by the assessing authority. We find no ground to deviate from the finding entered by the tribunal, confirming the addition. The contention to the contrary raised is, therefore, rejected.

3. Another question raised by the petitioner, thought not seen considered by the tribunal in the order, is whether the petitioner can be granted exemption on the said transaction under Section 5(1) of the KGST Act on the ground that the purchaser who is also a jeweller has paid tax under Section 5A

of the KGST Act. We do not find any such exemption under the statutory scheme. On the contrary, there will be no liability on the purchaser under Section 5A, if the seller is a dealer liable to tax under Section 5(1) of the Act, irrespective of whether the selling dealer remits the tax or not. The TRC is, therefore, devoid of merits and is dismissed.

C.N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

kbk.

C.N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

S.T.REV.NO.20 OF 2003

JUDGMENT

21st July, 2006.